**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1290 OF 2007**

Ajanta Pharma Ltd., a Company incorporated under the Companies Act, 1956 and having its registered Office at Ajanta House, Charkop, Kandivili (West), Mumbai - 400 067. ..Petitioners.

V/s.

1. The Assistant Commissioner of Income-tax, Range 9(1), 2nd Floor, Aaykar Bhavan, M.K.Road, Mumbai - 400 020.

2. The Commissioner of Income-tax-9 Room No.363, 3rd Floor, Aayakar Bhavan, M.K. Marg, Mumbai-400 020.

3. Union of India, through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi - 110 101. ..Respondents.

Me.J.D.Mistry with R.Muralidhar and Atul K.Jasani for petitioners.

Mr.Ashok Kotangale with Parag Vyas and Arun D. Nagarjun for respondents.

**CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.**

**DATED : 18TH JULY, 2007.**

**ORAL JUDGMENT (PER F.I.REBELLO, J.)**

1. Rule. Heard forthwith.

2. The petitioners are aggrieved by the

communication dated 7/6/2007 whereby the objection raised by the petitioners for reopening the assessment had been rejected.

3. A few relevant facts may be set out which are as under:-

The petitioners were involved in supplying goods to the State of Iraq. The petitioners had the requisite permission. The petitioners filed the return of income for the assessment year 2000-01 on which an assessment order came to be passed. It is not necessary to refer to the various other facts.

. The Assistant Commissioner of Income Tax issued a notice to the petitioner under section 148 of the Income Tax Act, 1961 (‘the Act’ for short) setting out therein that the income chargeable to the tax for the assessment year 2000-01 has escaped assessment within the meaning of section 147 of the Act and, therefore, the authority proposed to reassess the income for the said assessment year and calling upon the assessee to file a return in the prescribed form within 30 days. It was mentioned that the notice has been issued after obtaining necessary sanction of the Commissioner of Income-Tax, CIT-IX. By the

communication of 3rd April, 2007 the petitioners addressed a letter to the respondent No.1 setting out that with the notice under section 148 of the I.T. Act, they had not received the copy of the reasons recorded. The reasons was duly communicated by the respondent No.1 to the petitioner. In the reasons given, it was recorded that in view of the Volcker Committee Report, the issue regarding the commission paid on Iraq exports represents "Kick Back". The "Kick Back" payments are not allowable expenditure as per explanation to section 37(1) of the Act and, therefore, the commission paid by the petitioner in favour of M/s. Galala & Co. is not allowable. It was also set out that the assessee had failed to disclose full and true facts regarding commission paid to M/s.Galala & Co.

4. The petitioners by letter dated 18/4/2007 submitted a return of income under protest. By the communication dated 9th May, 2007 various objections were filed to the reasons recorded. It was submitted that the reasons recorded are baseless. By the communication dated 7/6/2007 the respondent No.1 intimated to the Principal Officer of the petitioner that the objections filed had been rejected. It was further set out that the Volcker Committee Report is admittedly a published document in which the name of

the petitioner company appears as being involved - whether the case gets covered factually in the alleged "kick back" payment or not is matter of scrutiny and investigation by the Income tax authorities and it could not be said that the documents in the form of Volcker Committee Report cannot be waived as hearsay information since the same has taken the shape of Government record.

5. At the hearing of this petition, on behalf of the petitioners, it is submitted that the reasons to believe as communicated to reopen the assessment are based on no material and consequently the notice under section 148 of the Act has to be quashed and / or the rejection of objections by communication dated 7/6/2007. The learned counsel tried to contend that a perusal of Volcker Committee Report would indicate that the petitioners had not made any "kick back" payment to the Iraqi Government.

6. A reply has been filed on behalf of the respondents by Shri R.Andiappan, Asstt. Commissioner of Income-tax. It is set out therein that the generalised report by the Volcker Committee involves names of 2200 Indian companies and that would be enough ground for forming the opinion that the income

chargeable to tax has escaped assessment in the case of the petitioners, whose name also appears in the said list of 2200 companies. The awareness of the petitioners regarding its being involved in the said report cannot by itself make any exception from the observations contained in the said report. It is also pointed out that Ministry of Finance, Department of Revenue, CBDT in F.No.414/117/2005-IT(inv.I) dated 18/11/2005 has reproduced the subject of enquiry in respect of entities mentioned in Volcker Committee Report. It is pointed out that the Kick back programme amongst other involved inland transportation fees which were not approved by the United Nations and such fees was paid directly to the Iraqi Government or to front companies outside Iraq which did not go into Escrow account which had been maintained in oil transactions under the programme. It is not necessary for us to cull out other excerpts from the said office memorandum. Suffice it to say that the office memorandum lists the petitioners as one of the Companies to have paid the appropriate amount known as "kick back". It is, therefore, submitted that this Court ought not to interfere at this stage in the exercise of its extra ordinary jurisdiction.

7. We have heard the learned counsel for the

parties. The question is whether prima facie there are reasons to believe, which gave jurisdiction to the respondent No.1 to issue notice under section 148 of the Act. The office memorandum was issued on 18th November, 2005. The subject of the memorandum is "Enquiry in respect of entities mentioned in the Volcker Committee Report." The said office memorandum list the Indian Companies. The petitioners' name is shown in one of the list and appropriate amounts paid as "kick back" are set out. The Volcker Committee Report was put up on the Website after 27/10/2005. The petitioners' assessment for the relevant year was made before that. Therefore, on the date when the assessment order was passed, the report of the Volcker Committee was not available. The Central Board of Director Taxes pursuant to the Volcker Committee Report by office memorandum dated 18/11/2005 had issued directions to all cadres of the Chief Commissioner of Income Tax to conduct enquiries in respect of the transactions entered in by the entities mentioned in the report.

On behalf of the petitioners, the learned counsel has drawn our attention to the Judgment of the Supreme Court in **GKN Driveshafts (India) Ltd. V/s. Income-Tax Officer and Ors.** reported in **(2003) 259**

**I.T.R. 19.**

8. Considering the Judgment the question that we are called upon to decide is whether it was open for the respondent No.1 to have rejected the objections filed by the petitioners herein. As set out earlier, the report of the Volcker Committee was not available when the original assessment was done. The Central Board of Direct Taxes has taken note of the report of the Volcker Committee and the involvement of Indian Companies and has issued an office memorandum with directions to make inquiries in respect of the entities mentioned in the report. It is not disputed that the said office memorandum would be binding on the authorities. As may be noted, the basis for exercise of jurisdiction by issuing such notice under section 148 of the Act are ‘reasons to believe’.

. In our opinion, though on behalf of the petitioners, it is vehemently sought to be contended that there exists no reasons, prima facie we are of the opinion that the petitioners have a remedy of showing cause before the respondent No.1, which in our opinion would be an adequate and efficacious remedy. This would, therefore, be a case where this Court on the present facts ought not to exercise its extra ordinary

jurisdiction. We may point out that the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. (supra) has while disposing of the Special Leave to appeal observed as under:-

> " We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income-tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reason for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years. "

In other words, the procedure that the assessing officer has to follow while dealing with the case of the person served with a notice, like the petitioners herein, has been set out.

9. Considering the law as decided by the Supreme Court the ends of justice on the facts of this case would require that the impugned communication dated 7/6/2007 is quashed and set aside and the matter

is remanded back to the respondent No.1 to give to the petitioners an opportunity to file additional objections if in law it is permissible. The respondent No.1 thereafter to dispose of the said objections in terms of what is set out in the Judgment of the Supreme Court in GKN Driveshafts (India) Ltd. (supra).

10. In the light of the above, the petition is disposed of by issuing following directions.

i. This petition is partly allowed. The impugned order dated 7th June, 2007 for the assessment year 2000-01 is set aside and the matter is remanded to respondent No.1 to dispose of the objections filed along with additional objections, if any, by following the due procedure of law and in conformity with the Judgment of the Supreme Court in GKN Driveshafts (India) Ltd. (supra).

ii. The entire exercise should be completed within a period of eight weeks from today.

iii. If on remand, the order passed is adverse to the petitioner, the same shall not be acted upon for a period of 8 weeks from the date of the order.

iv. Rule to the above extent is made absolute.

v. In the circumstances of the case, there shall be no order as to costs.

**(F.I.REBELL0, J.)**

**(J.P.DEVADHAR, J.)**